

REPRESENTATIVE FOR THE PETITIONERS:

J. Steven Jungbauer, *pro se*

REPRESENTATIVE FOR THE RESPONDENT:

Chad Miner, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

J. Steven & Erin Jungbauer, ¹)	Petition Nos.: 43-016-18-1-5-01238-19
)	43-016-19-1-5-01239-19
)	
Petitioners,)	Parcel No.: 43-07-12-300-930.000-016
)	
v.)	
)	County: Kosciusko
Kosciusko County Assessor,)	Township: Plain
)	
Respondent.)	Assessment Years: 2018 & 2019

Appeal from the Final Determination of the
Kosciusko County Property Tax Assessment Board of Appeals

January 26, 2021

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

¹ The Notices of Assessment of Land and Structures/Improvements (Form 11s) are captioned “Jungbauer J. Steven & Erin B. to Keegan M. & Sarah E. Bruner.” Mr. Jungbauer testified “I am a property owner” and the county did not raise any objections.

INTRODUCTION

1. The Petitioners challenged their 2018 and 2019 assessments. The Petitioners had the burden to prove the January 1, 2018, assessment was incorrect. Did the Petitioners provide sufficient evidence to support a reduction in the 2018 assessment? The analysis for the 2019 assessment will ultimately be determined by the Board's finding for the prior year.

PROCEDURAL HISTORY

2. The Petitioners initiated their 2018 and 2019 assessment appeals with the Kosciusko County Assessor on June 9, 2019.² On October 29, 2019, the Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations denying the Petitioners any relief. The Petitioners timely filed Petitions for Review of Assessment (Form 131s) with the Board.
3. On October 28, 2020, Dalene McMillen, the Board's Administrative Law Judge (ALJ), held the Board's administrative hearing telephonically. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. J. Steven Jungbauer appeared *pro se* via telephone and was sworn. Attorney Chad Miner appeared for the Respondent via telephone. Deputy County Assessor Chris Doty and Peggy Baker were sworn as witness for the Respondent via telephone.³
5. The Petitioners offered the following exhibits:

Petitioner Exhibit 1: "Assessed Value vs Sale Price vs Appraised Value" analysis,

Petitioner Exhibit 2: Aerial map and easement plat map of the area,

² The Respondent never argued the 2018 Form 130 was filed untimely and we will not raise the issue *sua sponte*. Additionally, it is not entirely clear if Mr. Jungbauer has proper standing to bring this appeal. Again, the Respondent never raised an issue regarding standing, and we will not do so *sua sponte*.

³ County Assessor Susan Engelberth and Kim Carson were also on the call but did not testify.

- Petitioner Exhibit 3: Purchase Agreement, Agreement Regarding Personal Property, and Counteroffer for 70 EMS T28A Lane dated July 5, 2017,⁴
- Petitioner Exhibit 4: Purchase Agreement, Counteroffer, and Seller Inspection Response #1 for 70 EMS T28A Lane dated September 11, 2017,
- Petitioner Exhibit 5: Residential Appraisal Report of the subject property prepared by Christopher Wagoner with an effective date of December 30, 2018; property record cards for 39 EMS T38 Lane, 102 EMS T6 Lane, 10 EMS T13E Lane, 138 EMS T50 Lane, 139 EMS T31 Lane, and 6587 North Kalorama Road,
- Petitioner Exhibit 6: Land Appraisal Report for TBD EMS T28A prepared by Christopher Wagoner with an effective date of January 1, 2019; property record cards for EMS T26 Lane, 159 EMS T25 Lane, 4103 East Forest Glen Avenue, and Forest Glen Avenue,
- Petitioner Exhibit 7: Affidavit from Mark Skibowski dated April 7, 2020,
- Petitioner Exhibit 8: Personal Property List included in Jungbauer purchase (November 3, 2017,) signed September 28, 2020,
- Petitioner Exhibit 9: Personal Property List included in Bruner purchase (December 22, 2017,) signed September 28, 2020,
- Petitioner Exhibit 10: Blank Sales Disclosure Form and Indiana Sales Disclosure Form Instructions,
- Petitioner Exhibit 11: Sales Disclosure Form for 70 EMS T28A Lane dated October 26, 2017,
- Petitioner Exhibit 12: Letter from Steve & Erin Jungbauer to the Kosciusko County Assessor; various emails between Steve Jungbauer and Kim Carson, and various emails between Steve Jungbauer and Barry Woods, Assessment Division Director for the Department of Local Government Finance (DLGF),
- Petitioner Exhibit 13: Sales Disclosure Form for 70 EMS T28A Lane signed by Jungbauers only on October 19, 2019,
- Petitioner Exhibit 14: Financial plan and Contract for Conditional Sale of Real Estate between Steven & Erin Jungbauer and Keegan & Sarah Bruner dated December 22, 2017,
- Petitioner Exhibit 15: Sales Disclosure Form for 70 EMS T28A Lane dated December 22, 2017,
- Petitioner Exhibit 16: Sales Disclosure Form for 70 EMS T28A Lane signed by Jungbauers and Bruners on October 15/16, 2019,

⁴ The Purchase Agreement was for 4.41 acres and the improvements. On January 3, 2018, the Jungbauers split-off 1.91 acres, a house, and a shed and sold it on contract to Keegan and Sarah Bruner. The property under appeal is the 1.91 acres and improvements.

- Petitioner Exhibit 17: Replacement value of personal property prepared by Ray E. Nugent, Senior Appraiser for VALUEPROS, with an effective date of November 15, 2019,
- Petitioner Exhibit 18: Replacement value of personal property prepared by Ray E. Nugent, Senior Appraiser for VALUEPROS, with an effective date of October 21, 2019,
- Petitioner Exhibit 19: Warranty deed between C. Ivan & Frances E. Heare and Peter J. Petlak dated October 28, 1994; two Easement for Underground Electrical Lines and Gas Mains agreements from Eugene & Ruby Paul to Northern Indiana Public Service Company dated November 23, 1968,
- Petitioner Exhibit 20: Email from Peggy Genshaw to Steve Jungbauer dated September 29, 2017,
- Petitioner Exhibit 21: 2018 subject property record card,
- Petitioner Exhibit 22: Two multiple listing sheets and property record card for 20 EMS T28A Lane,
- Petitioner Exhibit 23: Property record card for 6179 North 2nd Street,
- Petitioner Exhibit 24: Property record card for EMS T28A Lane (parcel #43-07-12-300-502.000-016),
- Petitioner Exhibit 25: Property record card for 83 EMS T26 Lane,
- Petitioner Exhibit 26: Property record card, Property History Detail sheet, and multiple listing sheet for 70 EMS T28A Lane,
- Petitioner Exhibit 27: “Ratio Analysis of ALL Properties Sold on Lake Tippecanoe,” and property record cards for 139 EMS T31 Lane, 223 EMS T26 Lane, 229 EMS T46 Lane, 5978 North 450 East, 69 EMS T17A Lane, 119 EMS T45 Lane, 16 EMS T30A Lane, 10 EMS T13E Lane, 119 EMS T36 Lane, 6358 North 300 East, 49 EMS T31 Lane, 3860 East Forest Glen Avenue, 61 EMS T36 Lane, 102 EMS T6 Lane, 36 EMS T30A Lane, 6242 North 300 East, 6 EMS T21 Lane, 14 EMS T20 Lane, 4026 East Forest Glen Avenue, 6220 North 300 East, 6831 North Kalorama Road, 22 EMS T23 Lane, 6789 North Kalorama Road, 36 EMS T26F Lane, 138 EMS T50 Lane, 57 EMS T2A Lane, 48 EMS T24 Lane, 129 EMS T45 Lane, 3586 East Forest Glen Avenue, 160 EMS T47 Lane, 3876 East Forest Glen Avenue, 6587 North Kalorama Road, 15 EMS T38 Lane, 6398 North 300 East, 6368 North 300 East, 71 EMS T2A Lane, 22 EMS T7B Lane, 77 EMS T36 Lane, 5854 North 450 East, 3778 East Forest Glen Avenue, 39 EMS T38 Lane, and 3740 East Forest Glen Avenue,
- Petitioner Exhibit 28: Indiana Gateway Sales Disclosure Form website (2 pages),
- Petitioner Exhibit 29: 2011 REAL PROPERTY ASSESSMENT MANUAL,
- Petitioner Exhibit 30: Understanding “In Lieu of” prepared by Thaddeus R. Ailes, Partner at Harrison and Moberly,

Petitioner Exhibit 31: *McCauley v. Harris*, 928 N.E.2d 309 (Ind. Ct. of Appeals 2010), and *Steven and Erin Jungbauer v. Kosciusko Co. Ass'r*, Pet. Nos. 43-016-18-1-5-01240-19 & 43-016-19-1-5-01241-19 (Ind. Bd. Tax Rev. Sept. 22, 2020).⁵

6. The Respondent offered the following exhibit:

- Respondent Exhibit A: Purchase Agreement for 70 EMS T28A Lane dated September 11, 2017,
- Respondent Exhibit B: Counter Offer for 70 EMS T28A Lane dated September 13, 2017,
- Respondent Exhibit C: Seller's Inspection Response #1 dated October 3, 2017,
- Respondent Exhibit D: Invoice, letter, and Personal Property Appraisal prepared by Gannon N. Troutner dated June 9, 2014,
- Respondent Exhibit E: Sales Disclosure Form for 70 EMS T28 Lane dated November 3, 2017,
- Respondent Exhibit F: Contract for Conditional Sale of Real Estate between Steven & Erin Jungbauer and Keegan & Sarah Bruner dated December 22, 2017,
- Respondent Exhibit G: Sales Disclosure Form for 70 EMS T28A Lane dated December 22, 2017,
- Respondent Exhibit H: Contains the following:
- Six photographs of subject property,
 - Seven photographs of Parcel No. 2971600270,
 - 2018 subject property record card,
 - 2018 property record card for Parcel No. 2971600270,
 - Per front foot calculation, property record card and aerial map for 36 EMS T30A Lane,
 - 2018 sales comparison approach analysis, Respondent's written testimony, property record cards, and aerial maps for 139 EMS T31 Lane, 10 EMS T13E Lane, and 61 EMS T36 Lane,
 - 2019 subject property record card,
 - 2019 property record card for Parcel No. 2971600270,
 - Tippecanoe lakefront land sales analysis; property record cards, and aerial maps for EMS T40A Lane, EMS T41 Lane, and 22 EMS T23 Lane; property record card and multiple listing sheet for 6179 North 2nd Street,

⁵ The Petitioners emailed the Board copies of two Board decisions after the hearing. These cases were discussed in the Petitioners' testimony. The Board does not consider this post-hearing evidence and the Board is able to take official notice of the record of other proceedings before the Board. See 52 IAC 4-6-11.

- 2019 sales comparison approach analysis; Respondent's written testimony; property record card, aerial map, and warranty deed for 20 EMS T23 Lane; property record cards and aerial maps for 138 EMS T50 Lane, EMS T50 Lane, 6791 North Kalorama Road, and 138 EMS T7B Lane.

7. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) the digital recording of the hearing and these findings and conclusions.
8. The property under appeal is a single-family home and utility shed located at 70 EMS T28A Lane in Leesburg.
9. For 2018, the PTABOA determined a total assessment of \$852,800 (land \$636,400 and improvements \$216,400).
10. For 2019, the PTABOA determined a total assessment of \$875,200 (land \$652,400 and improvements \$222,800).
11. On their Form 131 for 2018, the Petitioners requested a total assessment of \$724,999 (land \$531,666 and improvements \$193,333).
12. On their Form 131 for 2019, the Petitioners requested a total assessment of \$743,850 (land \$545,490 and improvements \$198,360).

OBJECTIONS

13. Mr. Jungbauer objected to Respondent's Exhibit D, the Personal Property Appraisal, on the grounds the exhibit is inaccurate and is not prepared in conformance with Uniform Standards of Professional Appraisal Practice (USPAP). Mr. Miner did not offer a response. The ALJ took the objection under advisement. Mr. Jungbauer's objection goes to the weight of the evidence rather than admissibility. Accordingly, the Board overrules the objection and Respondent's Exhibit D is admitted.

14. Mr. Miner objected to the admission of Petitioners' Exhibits 1, 5, 6, 7, 17, 18, 20, and 30 on the grounds of hearsay arguing the persons who prepared the documents were not present to validate or lay a foundation for the exhibits. The ALJ took these objections under advisement.
15. "Hearsay" is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. (Ind. R. Evid. 801(c)). The Board's procedural rules specifically address hearsay evidence:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If the hearsay evidence is not objected to, the evidence may form the basis for a determination. However, if the evidence: (1) is properly objected to; and (2) does not fall within a recognized exception to the hearsay rule; the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 4-6-9(d). The word "may" is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it.

16. The hearsay rule contains a specific exception for appraisal reports. Effective July 1, 2015, Ind. Code § 6-1.1-15-4 was amended to include the following language:

(p) At a hearing under this section, The Indiana board shall admit into evidence an appraisal report, prepared by an appraiser, unless the appraisal report is ruled inadmissible on grounds besides a hearsay objection. This exception to the hearsay rule shall not be construed to limit the discretion of the Indiana board, as trier of fact, to review the probative value of an appraisal report.

Ind. Code § 6-1.1-15-4(p) (2015 Ind. Acts sec. 33, SEA 467). Petitioners' Exhibits 5 and 6 are appraisal reports, prepared by an appraiser. Accordingly, this exception to the hearsay rule applies. Therefore, these exhibits are admitted.

17. We agree Petitioners' Exhibits 1, 7, 17, 18, 20 and 30 contain hearsay. However, our procedural rules allow us to admit hearsay provided we do not base our final

determination solely on this hearsay evidence. 52 IAC 4-6-9(d). We therefore overrule the objections and note that these exhibits do not serve as the exclusive basis for our final determination.

PETITIONERS' CONTENTIONS

18. The subject property is assessed too high. Mr. Jungbauer claims the assessment is excessive, because the purchase price shown on the sales disclosure form included the value of personal property. *Jungbauer testimony; Pet'r Ex. 3, 4.*
19. The Jungbauers entered into negotiations on July 5, 2017, with Margaret P. Baker (Peggy Baker) to purchased 8.44 acres known as 70 EMS T28A Lane in Leesburg. The property had been on the market for five years. On October 26, 2017, the Petitioners purchased the land, improvements, and most of the household furniture for \$900,000. Mr. Jungbauer claims the \$900,000 purchase price included "mid-century furniture estimated at a worth of approximately \$100,000."⁶ *Jungbauer testimony; Pet'r Ex. 3, 4, 7, 8 & 11.*
20. On December 22, 2017, the Jungbauers split off a portion of the property and sold it via Contract for Conditional Sale of Real Estate (Contract) to the Bruners. This portion included 1.91 acres, a lakefront home, and a utility shed. The Bruners purchased this portion of the property for \$800,000. The 1.91 acres and improvements, also known as parcel number 43-07-12-300-930.000-016, is the subject property. *Jungbauer testimony; Pet'r Ex. 14.*
21. Mr. Jungbauer claims on or around June 14, 2019, he discovered there was an error on the sales disclosure form executed on December 22, 2017, for the subject property. The sales disclosure form excluded \$75,000 in personal property.⁷ According to Mr.

⁶ Mr. Jungbauer and the Respondent submitted exhibits and spent time discussing parcel number 43-07-12-300-502.000-016, an adjoining property to the property under appeal. On May 14, 2020, the Jungbauers filed a Motion for Summary Judgment on this parcel. The Board issued its final determination on the Motion for Summary Judgment on September 22, 2020. Therefore, we will not be addressing the parties' arguments regarding parcel number 43-07-12-300-502.000-016. Instead, we will address the testimony and evidence regarding the subject property, parcel number 43-07-12-300-930.000-016. *Jungbauer testimony; Miner argument; Pet'r Ex. 31.*

⁷ Mr. Jungbauer conceded he failed to "document" the personal property on the sales disclosure form between the Jungbauers and Bruners.

Jungbauer, he consulted the County Assessor, PTABOA, and Barry Woods at the DLGF about correcting the error. Mr. Woods stated it “might be permissible for the applicable parties to re-submit a new Sale Disclosure Form with the corrected information.”

Accordingly, on October 15 and 16, 2019, the Jungbauers and Bruners signed a second sales disclosure form prepared by Brandi Farber of Fidelity National Title Company, LLC, stating “[T]otal sale price is \$800,000 of which, \$75,000 is for personal property.”⁸ Therefore, the purchase price of the real estate on December 22, 2017, was \$725,000. *Jungbauer testimony; Pet’r Ex. 9, 12, 15, 16.*

22. According to Mr. Jungbauer, the Contract prepared by attorney Stephen Snyder also did not identify the personal property included in the \$800,000 sale price of the subject property. Mr. Jungbauer testified he provided the information regarding the personal property to Mr. Snyder. But Mr. Snyder was “not clear” if personal property should have been included in the sale. Mr. Jungbauer did not “catch” that the personal property was not included in the contract until a later date. *Jungbauer testimony; Pet’r Ex. 14.*
23. Mr. Jungbauer argues the DLGF “Indiana Gateway Sales Disclosure Form” instructions specify personal property is not considered part of the value of the real estate. The personal property shown on the sales disclosure form does not have to be an exact value, but rather a good faith estimate of the value. He also argues the Board has previously ruled that when personal property is vaguely identified in a sale or purchase price, its contributory value should not be included in the property’s assessment. *Jungbauer testimony (citing RAI BRO Corp. v. Grant Co. Ass’r, Pet. No. 27-008-07-1-4-00360 (Ind. Bd. Tax Rev. June 8, 2010); Pet’r Ex. 28.*
24. To determine the accurate value of the personal property, Mr. Jungbauer contacted a PNC Bank employee who told him “the bank determines the value of the personal property by using 50% of its appraised value.” The household furnishings were originally appraised at \$200,000, thus rendering a \$100,000 personal property value. To support the bank’s

⁸ The second sales disclosure form incorrectly states the parcel number as 43-07-12-300-502.000-016.

value, Mr. Jungbauer contacted Ray Nugent of VALUEPROS, to appraise the replacement value of the personal property for insurance coverage. Mr. Nugent appraised twenty-one various household items on November 15, 2019, for \$96,650. He appraised the dining set on October 21, 2019, for \$13,200. Mr. Jungbauer claims that while the household furnishing appraised in excess of \$100,000, only \$75,000 of the personal property was included in the sale to the Bruners. *Jungbauer testimony; Pet'r Ex. 17, 18.*

25. Next, Mr. Jungbauer offered a Uniform Standards of Professional Appraisal Practice (USPAP) compliant appraisal prepared by certified residential appraiser Christopher Wagoner. Mr. Wagoner valued the property utilizing the sales comparison approach and cost approach. Based on his appraisal, Mr. Wagoner estimated the total value of the property to be \$702,000 as of December 30, 2018. *Jungbauer testimony; Pet'r Ex. 5.*
26. Mr. Jungbauer also researched two comparable land sales near the subject property. The first comparable sale is located at 20 EMS T28A Lane. It sold on December 13, 2019, for \$540,000 after being on and off the market for five years. This is “one of the best lots on the lake” and is located adjacent to the subject property. This property measures 1.16 acres and has 201 feet of actual lake frontage. In 2019 this property was assessed at \$644,900. After the December 13, 2019, sale the 2020 assessment was reduced to \$551,700. The subject property measures 1.91 actual acres, excluding the utility easements, with 174 feet of lake frontage and had a land assessment in 2019 of \$652,400. *Jungbauer testimony; Pet'r Ex. 1, 21, 22.*
27. The second comparable land sale Mr. Jungbauer researched is located at 6179 North Second Street. It sold on April 27, 2018, for \$1,590,000. This amount also equates to \$2,520 per front foot or \$6.28 per square foot. This property measures 5.50 acres with 630 feet of lake frontage. Mr. Jungbauer testified the price per front foot “goes down” the larger the size of the parcel and amount of lake frontage. To compare this property to the subject property, he completed a regression analysis of 22 “different” properties that sold in 2017 and 2018 where “most” of the value was attributed to the land and not the

house.⁹ Based on his regression analysis, he determined the price per square foot would be \$10.74 and the price per front foot would be \$2,823. Upon applying this value to the subject property, a value of \$491,226 is rendered. Mr. Jungbauer argues making a “reasonable comparison” between the properties, there are some inequities between the land assessments. Therefore, the land assessment for the subject property should be reduced to \$490,100 for 2019. *Jungbauer testimony; Pet’r Ex. 1, 21, 23 & 27.*

28. In response to questioning, Mr. Jungbauer testified the subject property was sold to the Bruners at market value, no discounts were given because they are family or for any other reason. *Jungbauer testimony.*

RESPONDENT’S CONTENTIONS

29. Ms. Peggy Baker represented the Estate of Ruby Evelyn Paul in the sale of parcel 43-07-12-300-502.000-016 to the Jungbauers on October 26, 2017. On the advice of estate planners, Ms. Baker retained Gannon Troutner to estimate the market value of the personal property as of May 13, 2014, “the date of Ruby Paul’s death.”¹⁰ Ms. Troutner came to the house, made a list of the personal property, and valued it at approximately \$3,000.¹¹ *Baker testimony; Resp’t Ex. D.*
30. Ms. Baker testified that in lieu of making repairs to the property at the time of the sale, the parties negotiated and some of the household goods worth “between \$2,000 and \$2,500 were left.” Ms. Baker stated she does not agree with Mr. Jungbauer’s \$100,000 appraisal of the personal property. Ms. Baker claims that had the personal property been worth \$100,000, she would have had “an estate sale.” *Baker testimony; Resp’t Ex. D.*
31. Ms. Baker testified that she was contacted by Mr. Jungbauer informing her she would be contacted by Fidelity National Title Company about correcting the original closing

⁹ The Petitioners’ “ratio” analysis list 42 properties for 2017 and 2018.

¹⁰ Mr. Jungbauer argued Gannon Troutner, or Gannon Getts, is a licensed auctioneer in Indiana and not a licensed appraiser.

¹¹ The Paul personal property list shows the value of the personal property to be \$3,820. It also indicates that \$400 of the total personal property was located at the “Stratford.” *Resp’t Ex. D.*

documents. According to Ms. Baker, she never received any “legal documents” from Fidelity National Title Company. Instead, on March 27, 2020, she received “corrected information” from Mr. Jungbauer requesting her signature on the corrected documents. Ms. Baker testified she refused to sign the corrected documents because she did not agree with them and she felt the original sales disclosure form for \$900,000 was accurate.

Baker testimony.

2018 assessment:

32. The subject property consists of a two-story home with four bathrooms, built on a slab, with 3,942 square feet of living area, a deck, enclosed porch, patio, and a 744 square foot garage. The home is in average condition and was built in 1968 with an effective age of 1971. The property record card lists the property measuring 1.84 acres with 157 feet of effective lake frontage. *Doty testimony; Resp’t Ex. H.*
33. To support the 2018 assessment, the Respondent offered a sales comparison analysis prepared by licensed residential appraiser, and part-time county assessor employee, Chris Doty. Based on her sales analysis, Ms. Doty estimated the reconciled value of the property to be “at or near” \$923,600 for the 2018 assessment year. *Doty testimony; Resp’t Ex. H.*
34. In developing her sales comparison analysis, Ms. Doty selected three comparable properties from 19 sales used in the County’s 2018 “trending analysis.” In searching for comparable properties, she focused on lake frontage, condition, size, and other amenities. Ms. Doty stated the subject property’s original purchase transaction included an additional 6.53 acres that the three comparable properties did not have, so based on the Board’s Motion for Summary Judgment a positive adjustment of \$29,300 was applied to the three comparable properties.
 - The first property is located at 139 EMS T31 Lane in Leesburg. This property sold for \$900,000 on March 21, 2017. The lot measures 0.32 acres with 85 feet of effective frontage. The 4,704 square foot, one-story home, includes a 1,724

square foot finished basement area, four bathrooms, a 1,124 square foot garage, has equal amenities to the subject property, and was built in 1953. The effective age of this home is 2000. After adjustments were made, the indicated value is \$997,300.

- The second property is located at 10 EMS T13E Lane in Leesburg. This property sold for \$850,000 on August 30, 2017. The lot measures 0.23 acres with 80 feet of effective frontage on Tippecanoe Lake. The 3,897 square foot, two-story home is situated on a crawl space, includes four bathrooms, a 506 square foot garage, has equal amenities to the subject property, and was built in 2004. After adjustments were made, the indicated value is \$847,800.
- The third property is located at 61 EMS T36 Lane in Leesburg. This property sold for \$640,000 on October 4, 2017. The lot measures 0.29 acres with 54 feet of effective frontage on Tippecanoe Lake. The 2,294 square foot, 1.5-story home has a 610 square foot unfinished basement, two full and one-half bathrooms, an 864 square detached garage, has equal amenities to the subject property, and was built in 1928. The effective age of this home is 1960. After adjustments were made, the indicated value is \$925,700.

Doty testimony; Resp't Ex. H.

35. Ms. Doty presented one comparable land sale to prove the 2018 land assessment of the subject property is not excessive. The comparable property sold for \$457,000 on October 26, 2017. This property has 90 feet of actual frontage and only 82 feet of effective frontage. The improvements were removed right after the property was purchased. Accordingly, the effective front foot value is \$5,573. The 2018 land assessment for the subject property is \$4,100 per front foot. *Doty testimony; Resp't Ex. H.*

2019 assessment:

36. To support the 2019 assessment, the Respondent offered another sales comparison analysis prepared by Ms. Doty. Based on her sales analysis, Ms. Doty estimated the 2019

reconciled value of the property to be “at or near” \$923,000. *Doty testimony; Resp’t Ex. H.*

37. In developing her sales comparison analysis, Ms. Doty selected four comparable properties from 22 sales used in the County’s 2019 “trending analysis.” She stated, while the similarities to the subject property “are not ideal” the comparable properties were selected based on lake frontage, condition, bathrooms, basement, garage style, home style, and size.¹² Again, she stated the subject property’s original purchase transaction included an additional 6.53 acres that many of the comparable properties did not include, so based on the Board’s Motion for Summary Judgment a positive adjustment of \$29,400 was applied to some of the properties.

- The first property is located at 20 EMS T23 Lane in Leesburg. This property sold for \$575,000 on April 3, 2018. The lot measures 0.25 acres with 46 feet of effective frontage on Tippecanoe Lake. The 2,631 square foot, three-story home is situated on a crawl space, includes two full and one-half bathrooms, a 588 square foot garage, equal amenities to the subject property and was built in 1986. Because this property did not have the additional 6.53 acres, a \$29,400 adjustment was applied. After adjustments were made, the indicated value is \$971,000.
- The second property is located at 138 EMS T50 Lane in Syracuse. The property sold for \$845,000 on May 31, 2018. The lot measures 0.91 acres with 114 feet of effective frontage on Tippecanoe Lake. The 3,080 square foot, 1.5-story home has a 957 square foot finished basement, three full bathrooms, a 624 square foot garage, equal amenities to the subject property and was built in 1991. This property sold with an 0.70-acre additional lot, so a \$15,000 adjustment was applied. After adjustments were made, the indicated value is \$915,900.

¹² The county has tracked vacant lot sales on Tippecanoe Lake for the past 20 years and through analysis discovered the front foot values vary based on which side of the lake a property is located on. This explains the wide variation in effective lakefront land adjustment for 2019.

- The third property is located at 6791 North Kalorama Road in Leesburg. The property sold for \$675,000 on April 17, 2018. The lot measures 0.31 acres with 57 feet of effective frontage on Tippecanoe Lake. The 2,773 square foot, two-story home is situated on a crawl space, has three full bathrooms, two garages measuring 744 square feet and 320 square feet, equal amenities to the subject property, and was built in 1900. The effective age of the home is 2000. This property has 592 square feet of finish in the garage, so that was considered equal to the subject property's additional 6.53 acres. After adjustments were made, the indicated value is \$901,400.
- The fourth property is located at 138 EMS T7B Lane in Leesburg. This property sold for \$760,000 on June 18, 2018. The lot measures 0.74 acres with 104 feet of effective frontage on Tippecanoe Lake. The 2,704 square foot, one-story home has 912 square feet of finished basement and 866 square feet of unfinished basement, two full and one-half bathrooms, a 484 square foot garage, equal amenities to the subject property and was built in 1989. Because this property did not have the additional 6.53 acres, a \$29,400 adjustment was applied. After adjustments were made, the indicated value is \$902,500.

Doty testimony; Resp't Ex. H.

38. Ms. Doty also presented a land sales comparison analysis to prove the land assessment is fair and equitable. Three comparable lakefront lots were researched with sales prices ranging from \$270,000 to \$1,590,000. The effective per front foot prices ranged from \$2,536 to \$8,295. The average price per front foot is \$5,806 with a median price of \$6,585. She then weighted the \$2,536 per front foot price of 6179 North 2nd Street because it is located near the subject property, so the calculated average front foot rate is \$4,988.¹³ The subject property's 2019 land assessment is \$4,100 per front foot. *Doty testimony; Resp't Ex. H.*

¹³ This property is currently listed for sale at \$2,499,000 or \$3,986 per front foot. *Doty testimony; Resp't Ex. H.*

39. The Petitioners presented flawed evidence to reduce the assessment. The residential appraisal is flawed because the appraiser states frontage on the water is “where the real value is” but made minimal adjustments for site size. The appraiser estimated the front foot value to be \$3,500 per foot. Ms. Doty argues if \$3,500 per front foot is applied to the purportedly comparable properties, it would add an additional \$289,333 to his estimate of value and would render the overall value to be \$991,333. *Doty testimony (referencing Pet’r Ex. 5).*
40. The Petitioners’ appraisal of the personal property is also flawed. The appraisal states its purpose is to determine the replacement value of the personal property for obtaining insurance coverage and that other uses of the report render it null and void. The appraiser also stated under the Certification of Appraiser that he has not made a personal inspection of the property that is the subject of the report. Under scope of work, the appraiser states an extraordinary assumption was made, in that identification of the property was performed from images and descriptions provided by the client. The appraiser has not personally examined the property listed in the report. *Doty testimony (referencing Pet’r Ex. 18).*
41. The Petitioners’ own sales analysis is flawed because the purportedly comparable property located at 20 EMS T28A Lane sold on December 13, 2019. Therefore, the sale is outside the “sale window” for the 2018 and 2019 assessment years. *Doty testimony (referencing Pet’r Ex. 22).*
42. The Petitioners’ Ratio Analysis is also flawed. Mr. Jungbauer included a property located on a channel and a property with a condominium. His 2017 calculation included two sales from 2018 and the 2018 calculation omitted those same two sales. Also, based on the property record cards attached there were errors in reporting some assessed values and sale prices. For example, 6 EMS T21 Lane is shown on the ratio analysis with a sale price of \$296,599 and an assessed value of \$315,000 but the property record card indicates a sale price of \$296,500 and a 2018 assessed value of \$307,400. Additionally, 4026 East Forest Glen Avenue lists a January 17, 2018, sale price of \$765,000. The

Respondent was unable to verify the sale price or date of the transaction. *Doty testimony (referencing Pet'r Ex. 27, pages 18 & 20).*

BURDEN OF PROOF

43. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute creates two exceptions to that rule.
44. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeal taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
45. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
46. The Petitioners argue the combined property assessments of their “lakefront property and the land behind it” increased by more than 5% from 2017 to 2018. The total combined assessment increased from \$831,000 in 2017 to \$956,300 (\$852,800 lakefront property

and \$103,500 land behind it) in 2018, therefore the burden should shift to the Respondent. The Respondent argued the parcel number 43-07-12-300-930.000-016 under appeal did not exist in 2017, it was split off in December of 2017 from parcel number 43-07-12-300-502.000-016.

47. Here, the property record card and contract for conditional sale of real estate shows land totaling 1.91 acres, a single-family home and utility shed were purchased by Keegan and Sarah Bruner on December 22, 2017. The 1.91 acres was split from 8.44 acres owned by J. Steven and Erin Jungbauer. Because the subject property was a new parcel on January 1, 2018, it is not the “same property for the prior year” for purposes of Ind. Code § 6-1.1-15-17.2(a). Furthermore, this new parcel was not the subject of an appeal as described in Ind. Code § 6-1.1-15-17.2(d). Accordingly, the Petitioners have the burden of proof for the 2018 assessment year. Assigning the burden for the 2019 assessment year will ultimately be determined by the Board’s finding for the prior year.

ANALYSIS

48. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
49. Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2018 assessment, the valuation date was January 1, 2018. *See* Ind. Code § 6-1.1-2-1.5. For the 2019 assessment, the valuation date was January 1, 2019. *Id.*

2018 assessment:

50. To prove the subject property is over-assessed, the Petitioners offered the Contract for sale of real estate and the sales disclosure form indicating the Bruners purchased the property on December 22, 2017, for \$800,000. The purchase price can be the best evidence of a property's value. *Hubler Realty Co. v. Hendricks Co. Ass'r*, 938 N.E.2d 311, 315 (Ind. Tx Ct. 2010). However, the Petitioners claim the sale price included \$75,000 in personal property that should be deducted from sale price. The Respondent did not dispute the purchase of the property may have included personal property, but rather the value of the personal property. According to the disinterested opinion of Ms. Baker, she testified the nominal value of the personal property included in the sale was "between \$2,000 and \$2,500."
51. The Petitioners attempted to submit a "corrected" sales disclosure form that was signed by the Jungbauers and Bruners on October 15 and 16, 2019, showing the subject property was purchased for \$800,000 with an "estimated" personal property value of \$75,000. Making the purchase price of the real property \$725,000. However, the Petitioners failed to offer any evidence to show that the sales disclosure form was ever filed with or accepted by the county.
52. The Petitioners also submitted a "Replacement Value of Personal Property" appraisal prepared by Ray Nugent. Mr. Nugent provided a replacement value of the personal property at \$96,650 as of November 15, 2019. The Board is troubled by this appraisal for several reasons. First, the appraisal was prepared in order to obtain insurance coverage and the value estimate contained within the appraisal was for replacement value. Second, it is not clear if all this personal property was included in the 2017 sale or a portion of the property. And finally, and most importantly, this appraisal has an effective date of roughly 22 months after the relevant valuation date in question. For these reasons, we find this evidence lacks probative value.

53. We are persuaded that personal property was included in the 2017 purchase of the subject property. And we find the disinterested opinion of Ms. Baker to be the most credible evidence provided. We will give the Petitioners the benefit of the doubt and use Ms. Baker's high-end estimate of \$2,500 to value the personal property. According, we find the 2017 purchase price to be \$797,500.
54. Our inquiry does not end there, because the Respondent offered its own valuation evidence.
55. The Respondent presented a sales comparison analysis prepared by a licensed residential appraiser Chris Doty. In her 2018 analysis, she examined three purportedly comparable properties and opined the value of the subject property "at or near" \$923,600 for 2018.¹⁴
56. To effectively use the sales-comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
57. Here, Ms. Doty offered three purportedly comparable properties that were the "most" comparable to the subject property and located on Tippecanoe Lake. Simply because a property is located on the same lake in the same area does not mean it is comparable. She offered conclusory explanations for how the three purportedly comparable properties were chosen and failed to offer any meaningful testimony relating each property's specific features and characteristics to the subject property. Although she accounted for differences between the subject property and the purportedly comparable properties by

¹⁴ It is not clear from the record if Ms. Doty has included the adjacent 6.53 acres from parcel number 43-07-12-300-502.000-016 in her estimate of value. She applied a positive adjustment of \$29,400 to all her purportedly comparable properties for 2018.

adjustments for site, condition, living area, bathrooms, garages, and additional 6.53 acres, she did little to show how the features and amenities of the purportedly comparable properties were actually similar to those of the subject property as required by *Long*.

58. More importantly, Ms. Doty did not certify her sales comparison analysis conforms to generally accepted appraisal principles or was USPAP compliant. Thus, her sales comparison analysis is not probative evidence of market value-in-use.
59. In finding that Ms. Doty's analysis lacks probative value, the Board recognizes that she is a licensed residential appraiser. But even a recognized appraiser's expert testimony lacks probative value when it is conclusory. *See Inland Steel Co. v. State Bd. of Tax Comm'rs*, 759 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (finding that an expert's testimony that the Producer Price Index (PPI) should be used to convert obsolescence from 1993 dollars to 1985 dollars lacked probative value where the expert did not explain the PPI represented, how it was calculated, or why it was appropriate). Where, as here, the analysis is highly conclusory and the opposing party has challenged the appraiser's valuation opinion, the appraiser must do more to explain the basic information underlying her opinion.
60. Under the circumstances, we conclude that the Petitioners' final purchase price to be the best evidence of market value-in-use as of January 1, 2018. The Respondent failed to offer any probative evidence to prove a different value and failed to rebut or impeach the Petitioners' prima facie case. Accordingly, the Petitioners should be entitled to have the 2018 assessment for parcel 43-07-12-300-930.000-016 reduced to \$797,500.

2019 assessment:

61. Because the Petitioners were successful in their 2018 assessment appeal, the burden shifts to the Respondent to prove the 2019 assessment is correct. Ms. Doty presented a similar sales comparison analysis as she did for the 2018 assessment year, although it was adjusted for the 2019 assessment year. For the same reasons as previously stated, the Respondent failed to make a prima facie case that the 2019 assessment is correct. Therefore, the Petitioners would normally be entitled to have their assessment lowered to

the 2018 level of \$797,500 as determined by the Board. The Petitioners, however, requested their 2019 assessment be set at \$743,850.

62. The Petitioners offered probative evidence in the form of a USPAP-compliant appraisal performed by Christopher Wagoner. In completing the appraisal, he developed the cost approach and the sales comparison approach and ultimately valued the property at \$702,000 as of December 30, 2018. An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case. *Meridian Towers*, 805 N.E.2d at 479.
63. To impeach the appraisal, the Respondent argued the appraiser made minimal adjustments to the site size even though he states the frontage on the water is where the real value is. The amount of Wagoner's adjustments for lake frontage does give us pause. The Board recognizes however, the appraisal process requires expertise and most often involves issues that are a matter of opinion, rather than questions with a correct or incorrect answer. He selected lots he deemed comparable and made adjustments to account for various differences. This is well within the expertise of a licensed appraiser. The Respondent failed to offer any evidence of specific errors that would have led to a different valuation conclusion. Consequently, the Respondent's argument that the appraisal is flawed is unpersuasive. While the appraisal is not perfect, the Respondent failed to impeach or rebut it. Thus, we find the appraisal to be the best evidence of market value-in-use for 2019.
64. Accordingly, the Petitioners should be entitled to have the 2019 assessment for parcel 43-07-12-300-930.000-016 reduced to \$702,000. With that being said, the Petitioners requested the 2019 assessment be \$743,850. We will accept the Petitioners concession and set the 2019 assessment at \$743,850.

SUMMARY OF FINAL DETERMINATION

65. In accordance with the above findings and conclusions, the Board finds for the Petitioners. We order the 2018 assessment be reduced to \$797,500 and the 2019 assessment be reduced to \$743,850.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court’s rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court’s rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.